



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 29, 1994

Ms. Margaret Ligarde
Senior Attorney, Legal Services Division
Texas Natural Resource
Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR94-785

Dear Ms. Ligarde:

You ask whether the identity of an individual who filed a complaint regarding a particular painting company in Kerrville, Texas, is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 29174. You seek to withhold the complainant's name under the informer's privilege.

The Texas Natural Resource Conservation Commission (the "commission") received an open records request for this information on August 3, 1994. The commission requested a decision from this office on September 9, 1994. Consequently, the commission failed to request a decision within the 10 days required by section 552.301(a) of the Government Code.

The Open Records Act requires a governmental body to release requested information or to request a decision from the attorney general within 10 days of receiving a request for information that the governmental body wishes to withhold. *See* Gov't Code § 552.301(a). When a governmental body fails to request a decision from the attorney general within 10 days of receiving a request for information, the information at issue is presumed to be public. *See id.* § 552.301(b); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ). To overcome this presumption, a governmental body must show a compelling interest to withhold the information. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); Open Records Decision No. 552 (1990) at 1.

A compelling interest may arise when a third-party's interests are at stake. Open Records Decision No. 552 at 1. However, the informer's privilege is designed to protect the government's interests, and thus, the existence of this privilege by itself does not demonstrate a compelling interest to withhold the information. Furthermore, you have not provided any specific information that would constitute a compelling reason for withholding the complainant's identity *in this particular instance*. Therefore, because you have not presented this office with a compelling reason why the information should be withheld, the commission must release the complainant's identity at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Margaret A. Roll".

Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/RWP/rho

Ref: ID# 29174

Enclosures: Submitted documents

cc: Ms. Melanie Muskie
Secretary/Treasurer
Kerrville Painting Company, Inc.
203 G Street South
Kerrville, Texas 78028-6105
(w/o enclosures)